

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRED T. CALDWELL,	§	
	§	No. 53, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0207018104B
Appellee.	§	

Submitted: October 30, 2009

Decided: January 29, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 29th day of January 2010, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) The appellant, Fred T. Caldwell, has filed an appeal from the Superior Court’s denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). We have determined that there is no merit to the appeal. Accordingly, we affirm.

(2) In 2003, a Superior Court jury convicted Caldwell of Trafficking in Cocaine, Delivery of Cocaine, and Conspiracy in the Second Degree. At sentencing, the Superior Court declared Caldwell a habitual offender and sentenced him to life in prison. On direct appeal, Caldwell elected to proceed *pro se*. By

order dated December 17, 2004, this Court affirmed Caldwell's convictions and sentence.¹

(3) The record reflects that Caldwell and his cousin, Warner Henry, were the victims of a home invasion at a residence where the two men were visiting on June 25, 2002. At about ten o'clock that evening, an unknown intruder suddenly broke into the residence. In the ensuing melee, Caldwell escaped injury, but Henry was severely beaten by the intruder.

(4) Detective William Porter of the Delaware State Police was assigned to investigate the break-in and assault. As part of his investigation, Porter interviewed Caldwell, who was a witness to the crimes. During that interview, which took place at Troop 3, Caldwell told Porter that he and Henry had been dealing drugs that day, and that he had between \$2,000 and \$3,000 in his pocket when the home invasion occurred.

(5) Porter reported Caldwell's disclosures of drug activity to a drug unit officer at Troop 3, Detective David Ellingsworth, who then interviewed Caldwell. Ellingsworth's interview with Caldwell lasted several hours, was prefaced by Miranda warnings, and was videotaped. During the interview, Caldwell told Ellingsworth, among other things, that he had given cocaine to Henry the day before the home invasion, that he had four ounces of crack cocaine and \$3,000 in

¹ *Caldwell v. State*, 2004 WL 2937673 (Del. Supr.).

his possession at the time of the break-in, and that he “‘moved’ one to two kilograms of cocaine per week.”²

(6) As a result of his incriminating statements to Ellingsworth, Caldwell was charged with Trafficking in Cocaine, Delivery of Cocaine, and Conspiracy in the Second Degree. Porter, Ellingsworth and Caldwell all testified at Caldwell’s trial, and the videotape of Ellingsworth’s interview with Caldwell was played for the jury. At the conclusion of the five-day trial, the jury convicted Caldwell as charged.

(7) Caldwell’s motion for postconviction relief raised fourteen claims, ten of which were grounded in ineffective assistance of counsel. The Superior Court referred the motion to a Commissioner for proposed findings and recommendation. The Commissioner directed that the State file a memorandum in response to the motion and that Caldwell’s trial counsel file an affidavit in response to the allegations of ineffective assistance. Caldwell then filed a reply to each of those submissions.

(8) By report dated March 27, 2007, the Commissioner recommended that the Superior Court deny Caldwell’s postconviction motion. In reaching that determination, the Commissioner found that Caldwell’s claims were barred either as formerly adjudicated or as procedurally defaulted. The Commissioner also

² *Id.*

found that Caldwell had failed to establish that he was prejudiced as a result of the alleged ineffectiveness of his counsel.

(9) Caldwell filed objections to the Commissioner's findings and recommendation. After considering the objections, the Superior Court adopted the Commissioner's report and denied Caldwell's motion for postconviction relief.

(10) In this appeal from the Superior Court's denial of postconviction relief, Caldwell argues ten of the fourteen claims that he raised in his postconviction motion.³ Two claims renew the arguments that Caldwell raised without success on direct appeal. As to those formerly adjudicated claims, the Superior Court held, and we agree, that the claims are procedurally barred pursuant to Rule 61(i)(4).⁴ Caldwell has presented no reason why reconsideration of either claim is warranted in the interest of justice.⁵

(11) Next, Caldwell argues that Porter's trial testimony should have been suppressed because Caldwell was not advised of his Miranda rights prior to his interview with Porter, and because the interview with Porter was not videotaped. Caldwell further contends that he raised this issue both on direct appeal and in his

³ To the extent Caldwell has not argued claims that he raised in his postconviction motion, those claims are deemed waived. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

⁴ See Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim unless reconsideration is warranted in the interest of justice).

⁵ *Id.*

postconviction motion but that neither this Court nor the Superior Court addressed it.

(12) The Court has considered Caldwell's suppression issue and has concluded that the issue has no merit. Contrary to Caldwell's assertions, he was not being interrogated at the time he made the incriminating statements to Porter, and thus Miranda was not implicated.⁶ Nor was Porter required to record his interview with Caldwell, which concerned the home invasion and assault to which Caldwell was a witness.

(13) Next, Caldwell alleges that the Superior Court trial judge erred when responding to a jury question. According to Caldwell, the trial judge's response improperly excluded evidence that the jury was entitled to consider. The Superior Court determined, and we agree, that the claim is barred pursuant to Rule 61(i)(3) without exception as Caldwell has demonstrated neither cause nor prejudice for failing to raise the claim on direct appeal.⁷

(14) Next, Caldwell alleges that he was denied the right to counsel on direct appeal. Caldwell's claim is without merit. Upon remand from this Court, the Superior Court held a hearing on Caldwell's request to proceed *pro se*. After

⁶ *Tolson v. State*, 900 A.2d 639, 643-44 (Del. 2006).

⁷ See Del. Super. Ct. Crim. R. 61(i)(3) (barring claim not previously raised absent cause for relief from the procedural default and prejudice); Del. Super. Ct. Crim. R. 61(i)(5) (providing in pertinent part that the procedural bar of (i)(3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

determining that Caldwell's request was made knowingly, intelligently, and voluntarily and after informing Caldwell of the hazards of self-representation, the Superior Court had no basis to deny Caldwell his constitutional right to represent himself.⁸

(15) As to all of his claims on appeal, Caldwell alleges, as he did in the Superior Court, that his trial counsel was ineffective. Having reviewed the record, the Court agrees with the Superior Court that Caldwell has not demonstrated that he was prejudiced as a result of any alleged ineffectiveness of his counsel.⁹

(16) Finally, Caldwell argues that the Superior Court abused its discretion when it decided his postconviction motion without conducting an evidentiary hearing and without appointing him counsel. Having carefully reviewed the record, the Court concludes that Caldwell's claim is without merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁸ *Dawkins v. State*, 2008 WL 2404444 (Del. Supr.) (citing *Hartman v. State*, 918 A.2d 1138, 1142 (Del. 2007)).

⁹ See *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation fell below an objective standard of reasonableness and was prejudicial).